

NRC "Q" access authorization and may be an employee of the NRC, its contractors, agents, or licensees. However, no employee or consultant of the NRC shall serve as Review Examiner reviewing the case of an employee (including a consultant) or applicant for employment with the NRC; nor shall any employee or consultant of an NRC contractor, agent or licensee serve as Review Examiner reviewing the case of an employee (including a consultant) or an applicant for employment of that contractor, agent, or licensee. No Review Examiner shall be selected who has knowledge of the case or of any information relevant to the disposition of it, or who for any reason would be unable to issue a fair and unbiased recommendation.

(b) The designated Review Examiners shall individually and independently, without consulting or otherwise communicating with one another, consider the matter under review based upon the record supplemented by any brief submitted by the individual or the Hearing Counsel. Review Examiners may request such additional briefs as any of them deems appropriate, which will be obtained by the Executive Director for Operations and provided to each Review Examiner. When a Review Examiner determines that additional evidence or further proceedings are necessary, the record may be returned to the Executive Director for Operations with a recommendation that the case be remanded to the Director, Office of Administration, for appropriate action, which may include returning the case to the Hearing Examiner and reconvening the hearing to obtain additional testimony.

(c) In conducting the review, Review Examiners shall make individual findings and recommendations as to the eligibility or continued eligibility of an individual for access authorization and/or employment clearance on the record supplemented by additional testimony or briefs as have previously been determined by a Review Examiner(s) as appropriate. When additional testimony is taken by the Hearing Examiner, a written transcript of such testimony shall be made by a person possessing appropriate NRC access authorization and/or employment clearance and, ex-

cept for portions containing Restricted Data or national security information, or other lawfully withholdable information, a copy of such transcript shall be furnished the individual without cost.

(d) The Review Examiners shall not consider the possible impact of the loss of the individual's services upon the NRC program.

(e) If, after considering all the factors in light of the criteria set forth in this part, a Review Examiner is of the opinion that granting or continuing access authorization and/or employment clearance to the individual will not endanger the common defense and security and will be clearly consistent with the national interest, the Review Examiner shall make a favorable recommendation; otherwise, the Review Examiner shall make an adverse recommendation. Each Review Examiner shall individually prepare a report of his or her findings and recommendations and submit the report in writing to the Executive Director for Operations, who shall furnish a copy to the individual. The findings and recommendations shall be fully supported by stated reasons supporting the findings and recommendations.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31610, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989]

§ 10.33 Action by the Executive Director for Operations.

(a) The Executive Director for Operations, on the basis of the record accompanied by all findings and recommendations, shall make a final determination whether access authorization and/or employment clearance shall be granted, denied, or revoked, except when the provisions of § 10.28 (i), (j), or (l) have been used and the Executive Director for Operations' determination is adverse, the Commission shall make the final agency determination.

(b) In making the determination as to whether access authorization and/or employment clearance shall be granted, denied, or revoked, the Executive Director for Operations or the Commission shall give due recognition to the favorable as well as the unfavorable information concerning the individual

§ 10.34

and shall take into account the value of the individual's services to the NRC's program and the consequences of denying or revoking access authorization and/or employment clearance.

(c) In the event of an adverse determination, the Executive Director for Operations shall promptly notify the individual through the Director, Office of Administration, of his or her decision that access authorization and/or employment clearance is being denied or revoked and of his or her findings with respect to each allegation contained in the notification letter for transmittal to the individual.

(d) In the event of a favorable determination, the Executive Director for Operations shall promptly notify the individual through the Director, Office of Administration.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31610, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989]

§ 10.34 Action by the Commission.

(a) Whenever, under the provisions of § 10.28(i), (j), or (l) an individual has not been afforded an opportunity to confront and cross-examine witnesses who have furnished information adverse to the individual and an adverse recommendation has been made by the Executive Director for Operations, the Commission shall review the record and determine whether access authorization and/or employment clearance shall be granted, denied, or revoked, based upon the record.

(b) When the Commission determines to deny or revoke access authorization and/or employment clearance, the individual shall promptly be notified through the Director, Office of Administration, of its decision that access authorization and/or employment clearance is being denied or revoked and of its findings and conclusions with respect to each allegation contained in the notification letter for transmittal to the individual.

(c) Nothing contained in these procedures shall be deemed to limit or affect the responsibility and powers of the Commission to deny or revoke access to Restricted Data or national security information if the security of the nation so requires. Such authority may not be delegated and may be exercised

10 CFR Ch. I (1–1–98 Edition)

when the Commission determines that invocation of the procedures prescribed in this part is inconsistent with the national security. Such determination shall be conclusive.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31610, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989]

§ 10.35 Reconsideration of cases.

(a) Where, pursuant to the procedures set forth in §§ 10.20 through 10.34, the Executive Director for Operations or the Commission has made a determination granting access authorization and/or employment clearance to an individual, the individual's eligibility for access authorization and/or employment clearance shall be reconsidered only when subsequent to the time of that determination, new derogatory information has been received or the scope or sensitivity of the Restricted Data or national security information to which the individual has or will have access has significantly increased. All new derogatory information, whether resulting from the NRC's reinvestigation program or other sources, will be evaluated relative to an individual's continued eligibility in accordance with the procedures of this part.

(b) Where, pursuant to these procedures, the Commission or Executive Director for Operations has made a determination denying or revoking access authorization and/or employment clearance to an individual, the individual's eligibility for access authorization and/or employment clearance may be reconsidered when there is a bona fide offer of employment and/or a bona fide need for access to Restricted Data or national security information and either material and relevant new evidence is presented, which the individual and his or her representatives are without fault in failing to present before, or there is convincing evidence of reformation or rehabilitation. Requests for reconsideration shall be submitted in writing to the Executive Director for Operations through the Director, Office of Administration. Such requests shall be accompanied by an affidavit setting forth in detail the information referred to above. The Executive Director for Operations shall cause the individual to be notified as to whether his